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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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John G. Dygon

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EXAMINER

INGBERG, TODD D

ART UNIT

PAPER NUMBER

2193

DATE MAILED: 09/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/056,508

Applicant(s)

DYGON ET AL.

Examiner

Todd Ingberg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1/24/02 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Claims 1 – 17 have been examined.

#### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 8 – 12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The current focus of the Patent Office in regard to statutory inventions under 35 U.S.C. § 101 for method claims and claims that recite a judicial exception (software) is that the claimed invention recite a practical application. Practical application can be provided by a physical transformation or a useful, concrete and tangible result. No physical transformation is recited and additionally, the final result of the claim is testing of software which is not a tangible result because the result is not clearly claimed to be tangibly embodied on a computer readable medium. The following link on the World Wide Web is for the United States Patent And Trademark Office (USPTO) policy on 35 U.S.C. §101.

[http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/guidelines101\\_20051026.pdf](http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/guidelines101_20051026.pdf)

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 – 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over **TOBAC**:

A Test Case Browser for Testing Object Oriented Software, by Ernst Siepmann et al, ACM 1998  
in view of TETware Test Case software from The Open Group, 1998.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1 – 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over **TOBAC**:

A Test Case Browser for Testing Object Oriented Software, by Ernst Siepmann et al, ACM 1998  
in view of TETware Test Case software from The Open Group, 1998 and **Derwent** translated  
Abstract of JP08331203A from December 13, 1996.

The product TETware is documented in two manuals

User's Guide (**UG**)

Programmer's Guide (**PG**)

**Claim 1**

A method for automated testing of software products in a multi-platform and multi product environment comprising the steps of:

selecting a list of at least one test case by a user via a user interface;  
storing said list in a queue;  
executing said test cases contained on said list automatically at specified times; and  
storing output information generated by said software products.

**Examiner's Response**

TETware teaches a method for automated testing of software products in a multi-platform (UG, page 8, multiple OS) and multi product environment (PG, pages 4, 147, 159, API for interfacing to Application Software also see PG. Page 256 TCM acts as a wrapper to provide commands) comprising the steps of:

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selecting a list of at least one test case (UG, pages 26 – 30, Scenarios) by a user via a user interface;

storing said list in a queue (UG, page 39, Test Case Controller – “Kernel”);

executing said test cases contained on said list automatically at specified times (**Derwent**, Abstract, Designated Time); and

storing output information generated by said software products (UG, page 36, results file). What TETware does not explicitly teach is the user interface being a browser. It is TOBAC who teaches the use of the browser (TOBAC, page 165, Figure 14). Derwent teaches the testing at designated times. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to combine the teachings of TETware, TOBAC and Derwent because, browser based test case environments at designated times provides for simulated testing.

### **Claim 2**

The method as set forth in claim 1, wherein the step of executing said test cases contained on said list automatically at a specified time further comprises the steps of retrieving location and attribute information about said test case from a database; using said location and attribute information to extract said test case applying input information associated with said test case to said software product.

#### Examiner's Response

In addition to the use of a daemon in claim 1, TETware also provides a generating and executing test processes (PG, page 100).

### **Claim 3**

The method as set forth in claim 1, wherein the step of selecting a list of at least one test case by a user via a user interface further comprises the steps of selecting a product to be tested by said test case; and selecting the platform for said software product to operate

#### Examiner's Response

TOBAC shows the product list in the second column of page 165, Figure 14.

### **Claim 4**

A method as set forth in claim 1, further comprising the step of: evaluating said output information generated by said software product to determine whether said product is operating as properly.

#### Examiner's Response

TETware teaches Error handling and reporting (PG, pages 92 – 93).

### **Claim 6**

The method as set forth in claim 1, wherein the step of applying input information associated with said test case to said software product further comprises the steps of retrieving a batch file containing execution commands;

running said execution commands;

providing said input information as specified in said execution commands to said application; and receiving source code output from said product.

#### Examiner's Response

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As per the rejection for claim 1.

**Claim 7**

A system for automated remote testing of software products in a multi-product and multi platform environment, comprising:

a series of databases;

a kernel containing executable code for automatically running the testing process; and

a user interface.

Examiner's Response

As per the rejection for claim 1.

**Claim 8**

A system as set forth in claim 7, wherein the series of databases further comprises: a platform preference database for maintaining data on various platforms the system can operate on; a product description containing data on the various software products that can be tested; an test definition database containing information on the test cases that can be executed; and a test result database containing information on the results of the testing procedure.

Examiner's Response

As per the rejection for claim 1 and PG, pages 5 – 6.

**Claim 9**

A system as set forth in claim 7, wherein the said kernel further comprises: a remote execution engine for executing batch files to run test cases; a test execution queue containing user instructions to the remote execution engine on which batch files to execute to run user selected test cases.

Examiner's Response

As per the rejection for claim 1 and TETware PG, page 12, #12, Distributed.

**Claim 10**

A system as set forth in claim 9, wherein the kernel further comprises: a code preparation module for evaluating the results of said test cases.

Examiner's Response

As per the rejection for claim 1 and UG, pages 50-53.

**Claim 12**

A system as set forth in claim 7, wherein said test cases are "self-checking."

Examiner's Response

PG, page 5, non conforming test cases.

**Claim 13**

A computer program product for automated remote testing of a software product in a multiproduct and multi-platform environment, comprising computer executable instructions for: storing identifying information for a list of user selected test cases in a queue; extracting said test

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case from a specified location using said information; executing said test case; storing the output generated from the execution of said test case.

Examiner's Response

As per claim 1 with emphasis on queue, UR, page 47 scenarios in TCM, executing test cases, UR, page 39, and results in log, UG, page 75).

**Claim 14**

A computer program product as set forth in claim 13, wherein the computer executable instructions for executing said test case further comprise instructions for: using identifying information in said queue to retrieve a batch file containing execution commands;  
running said execution commands;  
providing said input information as specified in said execution commands to the said software product; and  
accepting source code output from said software product.

Examiner's Response

As per claim 1 the commands of TCM, and the output in many forms PG, pages 46 results, states and events 47-48, errors pages 50-53.

**Claim 15**

A computer program product as set forth in claim 13, wherein the computer executable instructions for storing the output generated from the execution of said test case further comprises instructions for: compiling said source code output for processing; and processing said compiled source code.

Examiner's Response

As per the rejection for claim 1 and PG page 8.

**Claim 16**

A computer program product as set forth in claim 13, wherein the computer executable instructions for processing said compiled source code further comprises instructions for:  
comparing said output with pre-established expected output;  
determining results based upon whether said software product passed, partially passed or failed the testing process; and  
providing said results to the user.

Examiner's Response

As per the rejection for claim 1 and PG, pages 5 – 6.

7. Claim 5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over TETware and TOBAC as applied to claim 1-4, 6-10, 12-17 above, and further in view of Netscape by Mark Brown published 1995.

Examiner's Response

TETware and TOBAC teach test case usage for testing software via a browser. But the Browser is not an Internet browser and able to display a web page. It is Netscape who teaches Internet web browsers. Therefore, it would have been obvious to one of ordinary skill in the art at the

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time of invention to combine the browser based test case teachings of TETware and TOBAC with Netscape because, testing over the Internet makes testing tools more adaptive.

**Claim 5**

A method as set forth in claim 1, further comprising the step of displaying said output information on a web page accessible through an internet user interface.

**Claim 11**

A system as set forth in claim 7, further comprising a web page for displaying the results in a format accessible by a user using an internet browser.

**Claim 17**

A computer program product as set forth in claim 15, further comprising instructions for displaying said results on a web page.

***Response to Arguments***

8. Applicant's arguments with respect to claims 1 – 17 have been considered but are moot in view of the new ground(s) of rejection.

***Correspondence Information***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd Ingberg whose telephone number is (571) 272-3723. The examiner can normally be reached on during the work week..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (571) 272-3719. The fax phone number for the organization where this application or proceeding is assigned is 571 273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Todd Ingberg  
Primary Examiner  
Art Unit 2193

TI